

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:	)	
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LOUIS D. BURRELL and	)	Bankruptcy Case No. 89-91427
E. JEAN BURRELL,	)	
Debtors.	)	
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LOUIS D. BURRELL and	)	
E. JEAN BURRELL,	)	
Plaintiffs,	)	
	)	
vs.	)	Adversary Case No. 00-9045
	)	
KANKAKEE COUNTY TREASURER,	)	
ZION GATE MISSIONARY BAPTIST	)	
CHURCH, and DENNIS BALLINGER,	)	
Defendants.	)	

OPINION

This matter having come before the Court on a Motion to Set Aside Tax Deed and Subsequent Sale of Debtors' Real Estate filed by the Debtors as an adversary proceeding on June 1, 2000, and Response to Motion to Set Aside Tax Deed and Subsequent Sale of Debtors' Real Estate filed by Defendant, Zion Gate Missionary Baptist Church, on June 9, 2000; the Court, having reviewed written Memoranda of the parties and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The parties in this matter have indicated on the record that the material facts are not in dispute. As such, they requested that the matter be decided on briefs, which have been filed by the Debtors/Plaintiffs on October 10, 2000, and by Zion Gate Missionary Baptist Church on October 24, 2000.

The undisputed material facts in this matter are as follows:

1. On December 4, 1989, the Debtors filed for relief under Chapter 11 of the Bankruptcy Code.

2. At the time of their original filing under Chapter 11, the Kankakee County Treasurer was listed as a creditor, having various claims for delinquent real estate taxes on numerous parcels of real estate owned by the Debtors.

3. Subsequent to their filing for relief under Chapter 11 of the Bankruptcy Code, the Debtors became delinquent for real estate taxes on real estate commonly known as 168 North Rosewood, Kankakee, Illinois, for the tax years of 1993 and 1994. These post-petition real estate taxes were not a part of the Debtors' Chapter 11 Plan of Reorganization under their original filing on December 4, 1989.

4. On or about November 14, 1994, Dennis Ballinger acquired Kankakee County Tax Certificate No. 848, to Kankakee County parcel Nos. 16-09-33-317 and 16-09-33-317-006 for delinquent taxes on the real estate for the tax year 1993. Records indicate that the Debtors made no effort to redeem the 1993 taxes either directly or through their Chapter 11 bankruptcy proceeding.

5. On May 14, 1996, the Debtors converted their Chapter 11 bankruptcy to a proceeding under Chapter 13, again listing the Kankakee County Treasurer as a creditor. The record reflects that, at the time of the conversion to Chapter 13, Dennis Ballinger still held Kankakee County Tax Certificate No. 848 for the delinquent taxes on the real estate in question for the year 1993.

6. On January 16, 1998, Judge Duane O'Connor issued a State Court Order directing that a tax deed should issue from the County of Kankakee to tax buyer, Dennis Ballinger. Subsequently, on August 18, 1998, Dennis Ballinger acquired a tax deed to the real estate located at 168 North Rosewood, Kankakee, Illinois.

7. On August 18, 1998, Dennis Ballinger conveyed the subject real estate to the Zion Gate Missionary Baptist Church for the sum of \$6,500. The Zion Gate Missionary Baptist Church was a bona fide purchaser of the real estate in question for value, and there is no dispute that, subsequent to the conveyance, the Church invested time, money, and effort in and about improving the real estate in question.

8. On or about September 4, 1998, the Debtors initiated a contempt proceeding against the Kankakee County Treasurer in the Circuit Court of Kankakee County, Illinois. On November 5, 1998, the Kankakee County Treasurer filed his Petition to Set Aside Tax Deed and Declaration of Sale in Error also in the Circuit Court of Kankakee County, Illinois. The record reflects that the Debtors have entered their appearance in the Circuit Court proceeding in Kankakee County, and have not objected to the jurisdiction of that Court to hear and decide the issues involved.

9. Both the record of the State Court proceeding and the record of Debtors' bankruptcy proceeding indicate that the Debtors took no action within 30 days of the issuance of the tax deed to tax buyer, Dennis Ballinger, to set aside the deed. Rather, they initiated a contempt proceeding against the Kankakee County Treasurer on September 4, 1998.

10. The instant adversary proceeding entitled "Motion to Set Aside Tax Deed and Subsequent Sale of Debtors' Real Estate" was filed by the Debtors in this Court on June 1, 2000, requesting that this Court set aside the tax deed and the subsequent sale of the real estate located at 168 North Rosewood, Kankakee, Illinois, as being void and in violation of the automatic stay under 11 U.S.C. § 362.

In considering the issues raised by this adversary proceeding, the Court has reviewed the record of the Debtors' bankruptcy filing, and finds that the delinquent taxes for the year 1993, on the subject real estate, were not and could not have been a part of the Debtors' original filing under Chapter 11 of the Bankruptcy Code on December 4, 1989. The 1993 taxes are clearly post-petition to the December 4, 1989, bankruptcy filing, and, as such, could not have been claimed as a debt under the original Chapter 11 bankruptcy proceeding. There is no question that the 1993 delinquent real estate taxes were sold to tax buyer, Dennis Ballinger, on November 14, 1994, and that the sale was in no way a violation of the automatic stay under the Debtors' original Chapter 11 filing. The record reflects that there was no effort made by the Debtors at that time to set aside the sale or to redeem the 1993 real estate taxes. In fact, the next action which was taken by the Debtors that could have remotely been related to the sale of the 1993 delinquent real estate taxes was their conversion of their Chapter 11

bankruptcy proceeding to Chapter 13 on May 14, 1996. A review of the Debtors' Chapter 13 proceeding indicates that, while they listed the Kankakee County Treasurer as a creditor, they did not schedule the tax buyer, Dennis Ballinger, as a creditor. Thus, it is apparent that Dennis Ballinger had no notice of the Debtors' Chapter 13 bankruptcy proceeding at the time of the conveyance of the subject real estate to the Defendant, Zion Gate Missionary Baptist Church.

Despite the fact that the Defendant, Zion Gate Missionary Baptist Church, agrees that this Court has jurisdiction to hear the issues raised in the adversary proceeding filed by the Debtors on June 1, 2000, the Church argues that, pursuant to 28 U.S.C. § 1334(c)(1), this Court, in the interest of justice or in the interest of comity with the State Court or respect for State law, should and can abstain from hearing this particular proceeding. In regard to this argument, the Court finds that the Debtors have entered their appearance in the State Court proceeding and have, as such, consented to having such issues heard by the State Court. The State Court proceeding has been pending for two years, is currently at issue, and is ready for trial. There are clearly issues of State law involved with respect to the tax sale, and, in the interest of justice, this Court finds that it should abstain from hearing the identical issues raised in this adversary proceeding. In fact, the Court finds that the Debtors participated in the State Court action from November 1998 until the instant adversary proceeding was filed, without objecting to that action or seeking to remove the action to this Court. All in all, the Court finds that, pursuant to 28 U.S.C. § 1334(c)(1), it should abstain from hearing this matter and allow the State Court to resolve the issues that are currently ready for trial before it. Having determined that abstention is proper, the Court finds that the instant adversary proceeding should be dismissed without further delay.

ENTERED: November \_\_\_\_, 2000.

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GERALD D. FINES  
United States Bankruptcy Judge

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E. JEAN BURRELL,

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LOUIS D. BURRELL and  
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KANKAKEE COUNTY TREASURER,  
ZION GATE MISSIONARY BAPTIST  
CHURCH, and DENNIS BALLINGER,

Defendants.

ORDER

For the reasons set forth in an Opinion entered on the \_\_\_\_\_ day of November 2000;

IT IS HEREBY ORDERED that the Motion to Set Aside Tax Deed and Subsequent Sale of Debtors' Real Estate filed by Debtors/Plaintiffs, Louis D. Burrell and E. Jean Burrell, on June 1, 2000, is DISMISSED with prejudice.

ENTERED: November \_\_\_\_, 2000.

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GERALD D. FINES  
United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

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DATED: November \_\_\_\_\_, 2000.

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Deputy Clerk